



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

Matthew Zuker, Chairman
Craig W. Hiltz, Vice Chair
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member
John Lee, Associate Member

DECISION – WALPOLE ZONING BOARD OF APPEALS CASE NO. 08-18

**APPLICANT
NORMAN EIBYE**

LOCATION OF PROPERTY INVOLVED
100 High Street, Walpole, MA, Assessors Map 17, Lot No. 20; Zoning District: Rural (R)

APPLICATION

Requested Variance under Section 6-B.1 of the Zoning Bylaw to allow a 20x12 foot deck with stairs, and to legalize the existing house location.

On May 2, 2018 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting to grant a Variance for the relief requested.

The following members were present and voting:

Matthew Zuker, Chairman
Craig W. Hiltz, Vice Chair
Robert Fitzgerald, Clerk
Susanne Murphy, Member
Mary Jane Coffey, Member

A motion was made by Hiltz and seconded by Zuker to grant a Variance to allow a deck to be constructed at 19 feet from the rear lot line and for the existing dwelling to be 28.2 feet from the rear lot line where 30 feet are required as per the plan presented at the public hearing.

The vote was **5-0-0 in favor**, (Zuker, Hiltz, Fitzgerald, Murphy, Coffey voting); therefore the application for a **Variance** under Section 6-B.1 is hereby **granted**, subject to the following conditions:

CONDITIONS

1. The deck shall be constructed as shown on the plans submitted at the public hearing on May 2, 2018.
2. There shall be no further expansions or alterations that would increase or further encroach on the rear yard setback without further approval of the Board.



3. The Applicant shall verify the location of the onsite septic system prior to installation of the deck/stairs in order to not damage it through construction or heavy vehicular traffic, and the project will require approval by the Health Department, and all Title V setback requirements shall be met.

REASONS FOR DECISION

It is the finding of the Board that the applicant was able to meet the requirements for the granting of a Variance, as per the following:

1. *Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship to the appellant or petitioner.*

The 40,064 sf lot is an oddly shaped triangle with the existing dwelling situated in the southeast corner which created the rear-yard setback encroachment. As a result, it would be a substantial hardship to require the Applicant to relocate the structure or to reconstruct or relocate the doors onto a relocated deck. Due to the location of the septic system, it would be extremely difficult and costly to construct a deck in compliance with the setback requirement. Combined with the original placement of the house on the lot this is a unique situation and creates a hardship on the applicant. Therefore this requirement is met.

2. *Desirable relief may be granted without substantial detriment to the public good.*

The proposed rear yard encroachment is adjacent to the neighbor's driveway and further separated from their lot by a thickly wooded area. The neighbor's dwelling is several hundred feet away. The placement of the proposed deck is in the same location of the existing non-conforming deck, and is not significantly larger than the existing deck. The non-confirming dwelling has been there many years (It is suspected that the zoning interpretation at the time of construction was that the 28.2 setback was from a side yard and thus allowed.) Lastly, there was no opposition from the direct abutting neighbors. Therefore this requirement is met.

3. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*

The proposed deck does not exceed the current deck setbacks, and therefore the relief granted does not nullify or derogate from the intent or the purpose of the bylaw. As noted above, the substantial distance between the deck and the adjacent residence as well as the vegetation between the two structures provides a substantial buffer. Therefore this requirement is met.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

* * * * *

Said Variance is granted pursuant to Massachusetts General Laws c. 40A, s. 10 which provides in pertinent part as follows: "If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty (30) days of the date of application thereof, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section."

Massachusetts General Laws c. 40A, s. 11. provides in pertinent part as follows:

"...No variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant."

MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF C. 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk

RF/am

cc: Town Clerk
Engineering
Planning Board
Applicant
Board of Selectmen
Building Inspector
Conservation Commission
Abutters

This decision was made on May 2, 2018 and filed with the Town Clerk on May 16, 2018.